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**REMARKS**

This response is intended as a full and complete response to the non-final Office Action mailed on August 23, 2007. In the Office Action, the Examiner notes that claims 23, 24, 27, 32-51 and 53-59 are pending of which claims 23, 24, 27, 32-51, 53-59 are pending and rejected.

In view of the following discussion, Applicants submit that none of the claims now pending in the application are obvious under the provisions of 35 U.S.C. §103.

It is to be understood that Applicants do not acquiesce to the Examiner's characterizations of the art of record or to Applicants' subject matter recited in the pending claims. Further, Applicants are not acquiescing to the Examiner's statements as to the applicability of the art of record to the pending claims by filing the instant response.

**35 U.S.C. §103 Rejection of Claims 23, 24, 27, 39-42, 49-51 and 53-59**

The Examiner has rejected claims 23, 24, 27, 39-51, and 59 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,003,384 to Durden (hereinafter "Durden") in view of U.S. Patent No. 5,251,324 to McMullan (hereinafter "McMullan '324"), U.S. Patent No. 5,142,690 to McMullan (hereinafter "McMullan '690") and U.S. Patent No. 5,774,357 to Hoffberg (hereinafter "Hoffberg"). Applicants respectfully traverse the rejection.

The test under 35 U.S.C. §103 is not whether an improvement or a use set forth in a patent would have been obvious or non-obvious; rather the test is whether the claimed invention, considered as a whole, would have been obvious. The Durden, McMullan '324, McMullan '690 and Hoffberg references alone or in combination fail to teach or suggest Applicants' invention as a whole.

Applicants' independent claim 23 recites:

23. An apparatus that gathers programs watched data, comprising:  
a plurality of terminals connected to corresponding televisions and to a television program delivery system, each of the terminals including a memory that stores program access information;

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a receiver coupled to the plurality of terminals, the receiver receiving the program access information, wherein the program access information is stored as programs watched data in a programs watched matrix and is recorded as counts, the counts corresponding to the number of times a program category is watched at the associated terminal, wherein each of the associated terminals is assigned a unique programs watched matrix, and wherein the unique programs watched matrix is updated as additional program access information is provided by the associated terminal;

means for creating terminal group information indicating group assignments for the terminals by correlating the programs watched counts with categories of data, wherein the data categories include demographic data, and wherein the data categories are available for providing programming to the terminals; and

means for transmitting the terminal group information to the terminals in a control information stream. (Emphasis added.)

The Applicants respectfully submit that Durden, McMullen '324, McMullan '690 and Hoffberg fail to teach or suggest at least a receiver coupled to the plurality of terminals; the receiver receiving the program access information, wherein the program access information is stored as programs watched data in a programs watched matrix and is recorded as counts, the counts corresponding to the number of times a program category is watched at the associated terminal, wherein each of the associated terminals is assigned a unique programs watched matrix, and wherein the unique programs watched matrix is updated as additional program access information is provided by the associated terminal and means for creating terminal group information indicating group assignments for the terminals by correlating the programs watched counts with categories of data, wherein the data categories include demographic data, and wherein the data categories are available for providing programming to the terminals as recited in claim 23. The Examiner concedes that Durden fails to teach or suggest that the programs watched data is recorded as counts, wherein the program access information is stored as programs watched data in a programs watched matrix and is recorded as counts, the counts corresponding to the number of times a program category is watched at the associated terminal and means for creating terminal group information indicating group assignments for the terminals by correlating the programs watched counts with categories of data, wherein the data categories include

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demographic data, and wherein the data categories are available for providing programming to the terminals. (See Office Action, p. 3, ll. 9-16.) However, the Examiner asserts that McMullen bridges this substantial gap left by Durden. The Applicants' assume that the Examiner meant to assert specifically McMullen '324 as the Examiner appears to have failed to specify which McMullen reference he is referring to throughout the specification. Under such assumption, the Applicants respectfully submit that McMullen '324 fails to bridge the substantial gap left by Durden.

McMullen '324 fails to bridge the gap left by Durden because McMullen '324 also fails to teach or suggest at least the limitation of the programs watched data is recorded as counts, wherein the program access information is stored as programs watched data in a programs watched matrix and is recorded as counts, the counts corresponding to the number of times a program category is watched at the associated terminal. At best, McMullen '324 teaches the ability to collect information on a television channel watched by a viewer. (See McMullen '324, col. 24, ll. 5-7; col. 26, ll. 16-17). Nowhere in McMullen does it teach or suggest that the channel information may be further filtered to counts corresponding to the number of times a program category is watched at the associated terminal.

Moreover, McMullen '690 and Hoffberg also fail to teach or suggest the programs watched data is recorded as counts, wherein the program access information is stored as programs watched data in a programs watched matrix and is recorded as counts, the counts corresponding to the number of times a program category is watched at the associated terminal. Therefore, the combination of Durden, McMullen '324, McMullen '690 and Hoffberg fail to teach or suggest at least the limitation of the programs watched data is recorded as counts, wherein the program access information is stored as programs watched data in a programs watched matrix and is recorded as counts, the counts corresponding to the number of times a program category is watched at the associated terminal.

Furthermore, as discussed above, the Examiner also concedes that Durden also fails to teach or suggest means for creating terminal group information indicating group assignments for the terminals by correlating the programs watched counts with

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categories of data, wherein the data categories include demographic data, and wherein the data categories are available for providing programming to the terminals. (See Office Action, p. 3, ll. 9-16.) However, the Examiner asserts that Hoffberg bridges the substantial gap left by Durden.

Applicants' respectfully submit that Hoffberg fails to bridge the substantial gap left by Durden because Hoffberg also fails to teach or suggest a means for creating terminal group information indicating group assignments for the terminals by correlating the programs watched counts with categories of data, wherein the data categories include demographic data, and wherein the data categories are available for providing programming to the terminals. Hoffberg only teaches a human factored interface incorporating adaptive pattern recognition based controller apparatus (i.e. a remote control with a display).

Hoffberg does not support the Examiner's assertions that Hoffberg discloses a television system with an interface which tracks user programming. Rather, Hoffberg only teaches that the interface (i.e. the remote control with a display) initiates a programming sequence with "smart-screens". (See Hoffberg, col. 34, ll. 35-44.)

Furthermore, the Examiner seems to assert that Hoffberg teaches the limitation of means for creating terminal group information indicating group assignments for the terminals by correlating the programs watched counts with categories of data, wherein the data categories include demographic data, and wherein the data categories are available for providing programming to the terminals at column 51, lines 15-50.

However, the passages cited by the Examiner only discuss the simulations run on the remote control device described in Hoffberg. Hoffberg simply states "It is proposed that the interface (i.e. the remote control) be individually optimized for persons of various demographic groups, ages, education levels, etc., so that, in accordance with an object of the invention, the interface (i.e. the remote control) best matches a particular user's expectations." (See Hoffberg, col. 51, ll. 31-36, emphasis added.) Applicants respectfully submit that just because Hoffberg mentions the word "demographic" does not mean that Hoffberg teaches a means for creating terminal group information indicating group assignments for the terminals by correlating the programs watched

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counts with categories of data, wherein the data categories include demographic data, and wherein the data categories are available for providing programming to the terminals. Quite the contrary, it is not the system that recognizes demographic data as alleged by the Examiner, but rather Hoffberg is simply proposing to match the remote control device to the expectations of various groups (i.e. the various technical skill levels of individuals). (See Hoffberg, col. 35, ll. 8-13.) Notably, Hoffberg is entirely unconcerned with television programs, program watched counts or data categories that include demographic data and wherein the data categories are available for providing programming to the terminals.

In addition, McMullan '324 and McMullan '690 fails to bridge the substantial gap left by Durden and Hoffberg because McMullan '324 and McMullan '690 also fail to teach or suggest a means for creating terminal group information indicating group assignments for the terminals by correlating the programs watched counts with categories of data, wherein the data categories include demographic data, and wherein the data categories are available for providing programming to the terminals. Although McMullan '324 does teach collecting demographic data via a billing system (see McMullan '324, col. 8, l. 65 – col. 9, l. 13), McMullan '324 does not teach or suggest utilizing this demographic data by correlating programs watched counts with categories of data, wherein the data categories include demographic data. Thus, the combination of Durden, McMullan '324, McMullan '690 and Hoffberg fail to teach or suggest Applicants' invention as a whole.

Substantially similar arguments are hereby made regarding independent claims 24, 27, 32, 39, 43, 49, 51 and 59, by referring to the above argument in regards to claim 23, and instead of "programs watched counts", the group assignments depend upon "programs watched matrices," "program category rankings," or similar terms.

As such, Applicants submit that independent claims 23, 24, 27, 39, 49, 51 and 59 are non-obvious and fully satisfy the requirements of 35 U.S.C. §103 and are patentable thereunder. Furthermore, each of the remaining rejected claims depends from one of these claims and recites additional limitations therefrom. Therefore, these

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remaining rejected claims are patentable for at least the reasons discussed above with respect to the claims from which they depend.

Therefore Applicants respectfully request that all of the rejections be withdrawn.

### **Claims 32-38**

The Examiner has rejected claims 32-38 as being unpatentable over Durden in view of McMullan '324 and Hoffberg. Applicants respectfully traverse the rejection.

As discussed above, Durden, McMullan '324 and Hoffberg fail to teach or suggest Applicants' invention as a whole. Substantially similar arguments are hereby made regarding independent 32 by referring to the above argument in regards to claim 51. Specifically, as discussed above, McMullan '324 only teaches collecting information on a channel watched by a viewer. (See McMullen '324, col. 24, ll. 5-7; col. 26, ll. 16-17). McMullen '324 fails to teach or suggest the ability to collect counts corresponding to the number of times a program is watched. Thus, McMullen '324 fails to bridge the substantial gap left by Durden and Hoffberg as conceded by the Examiner. (See Office Action, p. 16, ll. 4-8).

As such, Applicants submit that independent claim 32 is non-obvious and fully satisfies the requirements of 35 U.S.C. §103 and is patentable thereunder. Furthermore, each of the remaining rejected claims depends from claim 32 and recites additional limitations therefrom. Therefore, these remaining rejected claims are patentable for at least the reasons discussed above with respect to claim 32 from which they depend.

Therefore Applicants respectfully request that all of the rejections be withdrawn.

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**CONCLUSION**

Thus, Applicants submit that none of the claims presently in the application are obvious under the provisions of 35 U.S.C. §103. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Eamon J. Wall or Jimmy Kim, at (732) 530-9404, so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

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